

## **Human Rights Education in Osler and Starkey: From Analytic Framework to Object of Analysis**

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### **Abstract**

Since the 1990s, Human Rights Education (HRE) has been an important focus of educational research. Key thinkers, such as James Banks and Ali Abdi, have argued that teaching human rights should be central to educational practice, urging policy-makers to integrate HRE into their respective national curricula. Two key figures within HRE are Audrey Osler (University of Leeds) and Hugh Starkey (Institute of Education). Throughout their careers they have written extensively on the topic and played an important role on the international stage advocating the dissemination of HRE practice. Yet, Osler and Starkey's work arguably lacks sufficient reflexivity, ignoring the ambiguities, complexities and paradoxes of human rights as a tool for political empowerment. Drawing on two strands of social theory, this article aims to open up possibilities for thinking reflexively about 'human rights' in Osler and Starkey's work. The first strand is inspired by post-structuralist theory and the second is anthropological and explores human rights ethnographically. I argue that Osler and Starkey should incorporate three issues concerning human rights into their arguments. These are that (a) human rights discourse and legislation operate in temporally and spatially ambiguous ways, (b) human rights discourse should be understood in their full contextual complexity as opposed to neutralised and (c) human rights discourse possesses a constitutive function and does not merely reflect pre-established identities. I suggest that adopting such an approach would pave the way for thinking critically and creatively about human rights as a tool for emancipatory social change.

*Keywords:* human rights education, reflexivity, ethnography, discourse, social change

### **Introduction**

Since the 1990s, human rights education has been an important focus of educational research. Key thinkers have argued that teaching human rights should be central to educational practice, urging policy-makers across the globe to integrate human rights education into their respective national curricula (Banks et al., 2005; Osler, Rathenow, & Starkey, 1995). In England, the call for increased and more effective Human Rights Education (HRE) has been spearheaded by Audrey Osler and Hugh Starkey. Widely

recognised as authorities within the field, Osler and Starkey have published extensively on the subject, far surpassing other scholars in the sheer quantity of material written on HRE. Throughout their careers, they have also set up a number of HRE research centres and graduate courses – including at Leeds, Birmingham, Oxford, Leicester and London – and have played a key role on the international stage advocating the dissemination of HRE practice. As one commentator put it, “there is something of an Osler/Starkey industry in evidence” (Davies, 2006, p. 251).

Whilst Osler and Starkey’s academic work has attracted widespread acclaim (Holden, 2006; Waldron, 2005), it has also been critiqued. Some have argued that their work focuses disproportionately on anti-racism, thereby overlooking issues such as classism (Faulks, 2006) and sexism (Lynch, 2006). Others have argued that Osler and Starkey do not engage sufficiently with political theory (Davies, 2006). Further still, some warn that their work has Eurocentric implications if applied uncritically (Davies, 2006; Ikeno, 2006). Notwithstanding the importance of these critiques, educationalists have not examined the lack of reflexivity with which ‘human rights’ is used as an analytic framework for research in Osler and Starkey’s writing. To give just one example, Keith Faulks (2006) argues that Osler and Starkey “neglect [crucial] areas of social exclusion” (p. 390) such as class. Yet Faulks does not mention the lack of critical introspection with which they adopt ‘human rights’ as an analytic structure. This same omission is made in other critiques (Davies, 2006; Hodgson, 2008; Ikeno, 2006; Lynch, 2006).

Given the centrality of ‘human rights’ to Osler and Starkey’s project, this is somewhat surprising. If the task of the scholar is to rigorously scrutinise that which is taken-for-granted, then it follows that the mobilisation of ‘human rights’ as a research framework is a pertinent analytic focus. Moreover, and as this article will suggest, this omission points to a broader critical deficit in HRE literature which tends to adopt a ‘human rights’ framework without sufficient self-scrutiny (Abdi & Shultz, 2008; Banks et al., 2004). This is problematic insofar as it buys into the notion that human rights are necessarily a force for progressive politics, a position which tends to ignore the ambiguities, complexities and paradoxes of human rights as a tool for political empowerment and social change. As such, although the paper will concentrate primarily on Osler and Starkey, the critiques which I will develop should be understood as highlighting broader shortcomings in HRE literature.

The article will draw on two strands of social theory. The first is more philosophical in nature (Brown, 1995) whilst the second develops its insights from grounded, ethnographic studies (Cowan et al., 2001; Povinelli, 2002). Rather than draw on these strands separately, my analysis will weave them together. This will enable me to explore the insights they present more creatively than a separate treatment of the two would allow. My proposal will be that Osler and Starkey should incorporate three issues concerning ‘human rights’ which they have not yet worked into their arguments. These are that: (a) human rights discourse and legislation operate in temporally and spatially ambiguous ways; (b) human rights discourse should be understood in its full contextual complexity and not be neutralised, and; (c) human rights discourse possesses a constitutive function and does not merely reflect pre-established identities. The article will focus on four of Osler and Starkey’s texts (2005, 2006, 2010, 2013). These have been chosen because they command authority within HRE and are Osler and Starkey’s most recent arguments. I will also examine briefly the usage of ‘human rights’ by other educationalists (Abdi & Shutz, 2008; Banks et al., 2004), as a means of drawing out the shortcomings I observe in Osler and Starkey in other educationalists’ work.

Inevitably, in turning an analytic lens onto ‘human rights,’ this paper runs the danger of being misread as ‘anti-human rights.’ This would be a vast misunderstanding of the arguments I will present. Rather, the analysis will grapple with the political ambiguities of human rights, suggesting it can be both a tool for empowerment and constraint (Brown, 1995; Cowan, 2001). It is also important to acknowledge explicitly that I will approach human rights as a *constructed* concept, and to clarify confusions, which may arise as a result. Approaching ‘human rights’ as constructed is *not* to say that human rights do not have any utility for progressive politics, nor does it necessarily refute the idea that human rights have potential for universal application. Rather, it asserts the need to understand ‘human rights’ as the product of human agency – that is, as a set of ideas which have been produced historically in time and place and which are entangled in, and often constitutive of, struggles for power; as such, they should be approached as open to contestation (Brown, 1995; Cowan, 2001).

Finally, it is important to briefly delineate the history of human rights and its relationship to political theory and HRE, as well as its implications for the critiques developed in this paper. Human rights (HR) legislation was first drafted by Eleanor Roosevelt and a team of other delegates, who composed the first United Nations (UN) Human Rights commission, as a response to the atrocities committed during the Second

World War (Ishay, 2007). In response to the passing of HR legislation, a series of debates followed within political theory exploring the philosophical contours of human rights, and discussion regarding the epistemological bases of human rights continues to the present day (Ishay, 2007). It was only in the 1990s, in response to the UN Decade for Human Rights Education, that HRE fully emerged as a discipline (Osler et al., 1995). Inevitably, HRE finds inspiration in some of the debates elaborated within political theory; as such, HRE and human rights political theory are not fully discrete disciplines. However, the critiques this paper delivers are directed to the way human rights have been articulated within HRE, specifically Osler & Starkey's work, as opposed to political theory. As such, it is not my intention to examine political philosophy. I now turn to the first section of this article.

### **1. The Temporal and Spatial Dimension of Human Rights**

When the temporal and spatial dimensions of...rights are combined, we can see clearly the impossibility of saying anything generic about the political value of rights: it makes little sense to argue for them or against them separately from an analysis of the historical conditions, social powers, and political discourses with which they converge (Brown, 1995, p. 98).

Post-structuralist schools of thought are typically appreciative of the way discourses are deployed in individual and group power struggles (Belsey, 2002; Brown, 1995). They stress that concepts should be analysed for the ways they operate within concrete social arenas, as opposed to in their abstracted form. If we adopt this position as our starting point, we entertain the possibility that the proliferation of 'human rights' discourse and legislation does not necessarily guarantee the political empowerment of dispossessed individuals and social groups but, rather, that human rights may have ambiguous political consequences (Brown, 1995).

Wendy Brown (1995) suggests that approaching human rights in the analytic terms of *temporality* and *spatiality* allows us to think about human rights on these terms. On the one hand, the *temporal* dimension of human rights reveals the manner in which a rights-based movement, which empowers dispossessed social groups in one historical period, may be less effective at another point in time when dominant actors appropriate human rights discourse for their own political projects of control and exploitation. One example is arguably the Afro-American Civil Rights movement and its political aftermath. During the 1960s, Black activists were highly successful in achieving social change through recourse to a rights-based

agenda (Green & Cheatham, 2009). For example, the right to vote and the right to equal employment were achieved. Yet, it has been argued that rights-based agendas have been co-opted by economic elites in recent years and are more politically constraining than enabling for dispossessed Afro-Americans today. Derrick Bell (1993) suggests that dominant, neo-liberal groups curtailed demands for further social change by asserting that Afro-American groups were recognised as equal upon being granted civil and political rights. Yet, as Bell (1993) suggests, a radical re-organisation of social structures may be needed in order to further empower dispossessed Afro-American groups today.

On the other hand, approaching ‘human rights’ on a *spatial* level acknowledges the political contradictions created during claims for human rights. Here, one group’s claim for human rights may rob another group of their own. For instance, article 19 of the Universal Declaration of Human Rights (UN, 1948), which states that everyone has the right to free speech, may conflict with a person’s right to be protected from hate speech, as with Muslims living in an Islamophobic society or homosexuals in a homophobic one (Brown, 1995). Equally, the right to privacy, article 12 of the Universal Declaration of Human Rights, may conflict with women’s right to be protected from patriarchal domination in the domestic sphere (Lister & Campling, 1997). It can also be suggested that certain human rights will always stand in irresolvable conflict with other human rights in a capitalist society. For example, an individual’s right to invest freely in the market (article 22) will be in conflict with the right to be free from exploitation (implied in article 1), insofar as we understand exploitation as the extraction of surplus value from one’s labour (Harvey, 2010). A case can also be made that the right to be a free, economic agent counteracts the right for all to participate on an equal footing in democratic processes (article 20), given that those who possess higher levels of economic, social, and cultural capital necessarily wield greater power in determining the outcome of political decisions than those with relatively little capital (Bourdieu, 2004).

Understood as such, we transcend the dichotomy that one has to be *for* or *against* human rights in terms of abstract principles; instead, we can embark on a situated analysis of ‘human rights’ and their effects. Indeed, the need to acknowledge the ambiguous operation of human rights is partially recognised by Osler and Starkey. Hence they argue that

[h]uman rights need to be *critically* examined in the context of [social] realities and *their potential as tools for change and transformation explored*. (...) Young people

need to test Human Rights as tools for change and transformation and to understand their strengths *and limitations* (Osler & Starkey, 2010, p. 17; emphasis added).

This same argument is repeated elsewhere in their work (Osler & Starkey, 2010, 2013). Yet we do not find a commitment to exploring these complexities in-depth in the rest of their writing. Rather, case studies almost exclusively exemplify how human rights practice is always politically empowering for the dispossessed (Osler & Starkey, 2005, 2010). For example, Osler and Starkey (2010) begin their latest book *Teachers and Human Rights Education* with the story of three individuals who suffered as a result of arbitrary detention, racial discrimination and a lack of social welfare provisions. The implication is that they would not have undergone such abuses if their human rights had been respected. This sets the tone for the following case studies, which overwhelmingly portray human rights as politically enabling (Osler & Starkey, 2010). A brief examination of other human rights educationalists' work reveals a similar bias. In an introduction to a recent edition, Abdi and Shultz (2009) portray human rights as almost exclusively "enfranchising the disenfranchised" (p. 4), only once mentioning their potential for political disempowerment. Banks et al.'s approach (2005) also depicts human rights in only the most positive, emancipatory light.

Interestingly, when Osler and Starkey recognise the political tensions of human rights, analysis remains brief and they opt to resolve rather than acknowledge these tensions. Osler (2013) notes that "freedom of speech is an important principle, but it is set in tension with others' right to human dignity and to feel secure" (p. 72), concluding that "freedom of speech is not a limitless freedom to insult or abuse another" (p. 72). Yet her analysis ends here, bypassing the murky question as to how the boundaries of free speech could be delineated more precisely, how these boundaries might then be contested, and how establishing such boundaries may entail sustaining certain power asymmetries. Similarly, Osler and Starkey (2005) acknowledge that human rights have been historically constructed upon a gendered public-private dichotomy with detrimental effects for women insofar as it has masked patriarchal domination within the home. Here again they close the issue by arguing that the shortcoming of human rights in this context is based upon a "failure to recognise the indivisibility of rights and the way [rights] are interconnected" (Osler & Starkey, 2005, p. 68). The spatial complexities of human rights are cordoned off. I now turn to the second section of this article, where I discuss the contextual complexities of human rights and the neutralisation of human rights legislation.

## 2. The Neutralisation of Human Rights Legislation

One defining *leit motif* in Osler and Starkey's (2005, 2006, 2010, 2013) work is their propensity to draw uncritically on human rights legislation drafted by international organisations (e.g., UN, 1948; UNESCO, 2005; UNICEF, 1991). These are referred to as a way of evidencing their claim that everyone has fundamental human rights which should form the basis for citizenship education in schools (Osler & Starkey, 2005, 2006, 2010, 2013). However – and as Naomi Hodgson (2008) has recognised – rather than present human rights legislation as debateable, Osler and Starkey (2005) typically present human rights decrees as beyond critique. This is exemplified in the language they use which typically neutralises human rights content. For example, Osler and Starkey make repeated reference to the “*internationally accepted principles* embodied in the Universal Declaration of Human Rights” (2005, p. 28; emphasis mine). If principles are *internationally accepted*, the implication is that there is no need to challenge them. A similar claim to an ostensible “international consensus” is both explicitly stated and implied in other instances, foreclosing an exploration of the ways human rights may be contested.

In their most recent monograph, Osler and Starkey (2010) present a more nuanced adoption of human rights legislation (Bajaj, 2012), arguing that human rights are dynamic and in a constant process of negotiation. Hence they propose that “[h]uman rights...have gained widespread currency through a process of cultural interaction and exchange yet they are in a constant process of development as they are interpreted, negotiated and accommodated in different cultural settings” (Osler & Starkey, 2010, p. 93).

In this instance, human rights are portrayed as anything but neutral; they are presented as politically potent given their malleability and the extent to which people can re-mould them in different environments. Yet in the rest of the book HR legislation is depicted as neutral. Human rights are frequently presented as a yardstick against which to judge people's political struggles, contradicting their previous emphasis on dialogue and negotiation. Hence they suggest that

“[t]eachers...might draw on the narratives [of people's everyday struggles] to study international human rights treaties. They may invite students to *identify which articles in the Universal Declaration of Human Rights they can recognise in the narratives*, whether this is through abuse and denial of rights or efforts to act to uphold these

rights and demonstrate human solidarity” (Osler & Starkey, 2010, p. 144; emphasis mine).

Note that the emphasis is not on asking students to reflect on the political potency of human rights legislation. Instead, they are asked to measure their own experiences *against* the benchmark of human rights legislation, implicitly deemed to be impartial. The neutrality of human rights is re-asserted when Osler and Starkey (2010) discuss the relationship between traditional cultures and human rights. They argue that traditional cultures “based on authority and duties have conceptions of human dignity, and well-being entirely independent of...human rights” (Osler & Starkey, 2010, p. 95). However, drawing on Donnelly, they suggest these aren’t to be reckoned with because they are “alternatives to, rather than different formulations of, human rights” (Osler & Starkey, 2010, p. 95). They seem to understand that traditional cultures will adopt human rights of their own accord as they break into modernity. Negotiation and adaptation is deemed unnecessary.

The neutralisation of human rights legislation is troubling for two reasons. First, it ignores the economic context in which human rights discourse is currently mobilised. Second, the voices of the actors who produced human rights legislation (UN, 1948) are disregarded. Let us begin with the first contention.

Following the end of the Second World War, European and North American governments transitioned toward the establishment of the welfare state in an attempt to build societies predicated on the values of meritocracy and possibilities for social and class mobility. Under the welfare state system, a specific relation between ‘citizen’ and ‘state’ was established: The citizen had certain rights and responsibilities which she would enact in society; in return, the state would guarantee certain levels of socio-economic equality and basic standards of living through redistributive mechanisms (Arnot, 2009). The advent of New Right agendas in the 1980s transformed the state-citizen relation: In this new setting, *the individual* was understood as responsible for ensuring her own standards of living in a de-regulated, competitive laissez-faire system. In this context, rights and responsibilities were rendered increasingly personalised, as opposed to collective, affairs. This marked the beginning of ‘individualisation’ in late modernity (Bauman, 2000; Beck & Bernsheim-Beck, 2002), characterised by increasing socio-economic inequalities and atomisation in society.



### 3. Contextualising Human Rights Discourse

#### 3.1 Neo-Liberalism and Human Rights

As Madeleine Arnot suggests (2009), this shift in state-citizen relations has led to a rather awkward positioning of 'human rights' discourse. On the one hand, the mobilisation of human rights discourse can counter socio-economic disparities created under neo-liberal conditions. Human rights emphasise that all human beings possess fundamental human dignities (Brysk, 2002). They may challenge the terms upon which the current economic system is run by prioritising the innate value of human life over and above processes of commodification. Human rights may, therefore, provide a means of transforming social relations by constructing a new ethic based on mutual respect (Brysk, 2002).

On the other hand, it is evident that human rights are increasingly implicated within, and largely constituted by, neo-liberal agendas. It can be argued that human rights have been rendered in increasingly *individualised* terms in the last three decades, reflecting a fragmentary process which Zygmunt Bauman and Ulrich Beck understand as the very source of social disintegration and socio-economic disparities. This is exemplified in papers written by international, development institutions which construct new notions of individualised citizenship. For example, the World Bank (2007) promotes individualised, entrepreneurial notions of personhood by asserting that individuals in contemporary societies must learn to assert both their formal (human, political and civil) rights and simultaneously act out their responsibilities as productive members of the neo-liberal economy. Arguably, individualisation has also permeated into the language of NGOs. It is curious to note that a number of organisations such as Amnesty International have taken to emphasizing people's political and civil rights, which emphasize an individualistic ontology, over and above economic and social rights, which present a more collectivist language (Farmer, 2005). Those who rally against neo-liberal inequalities through recourse to human rights may, therefore, inadvertently be promoting an ideology which has been appropriated by those they seek to combat. Approached as such, human rights must be examined against this socio-historical backdrop, as opposed to neutralised and de-contextualised from the milieu in which it proliferates as discourse. Otherwise, one runs the risk of ignoring the variegated and contradictory shape human rights take in the current socio-economic environment.

### 3.2 Human Rights as Situated Discourse

Neutralising human rights is also problematic because it concedes political ground by analytically detaching HR legislation from the voices of those who have produced them. Post-structuralist scholars emphasise that human rights are the product of *situated discourse* (Mutua, 2002) and are imbued with the values and ontological assumptions of the actors who have created them. As such, the way rights have been framed and the language in which they have been coded is not inconsequential and may exclude certain social groups. For example, an argument developed by Iris Young (1996) points to hidden masculine values in the notion of ‘free speech.’ Although seemingly neutral, Young argues that free speech assumes the centrality of classical rhetorical skills, predominantly masculinised forms of communication. This stands in contrast to feminised forms of communication which often emphasise embodied and emotional forms of talk (Noddings, 2003, Young, 1996).

Anthropologists and queer theorists suggest that Article 16 of the United National Declaration of Human Rights is at once Western-centric and hetero-normative. It states that “[t]he family is the... fundamental group unit of society and is entitled to protection by... the State” (UN, 1948). Here, the image of a traditional nuclear family is evoked and presented as ‘natural.’ Other family models, such as those involving a homosexual couple (Carsten, 2004) or more fluid kinship arrangements, as practised in Amazonian and Polynesian contexts (Belaunde, 2000; Strathern, 2005), are implicitly deemed to be ‘deviant.’ A further example would be the way political sentiments expressed in the Universal Declaration of Human Rights exclude those who do not share a liberal political worldview. In Article 3, abstract notions such as ‘liberty’ and ‘autonomy’ are referred to and universalised. This stands in contrast to indigenous voices which might frame human rights ideals in terms of inter-subjective, localised understandings of community (Belaunde, 2000; Strathern, 2005). Perhaps these arguments appear to be common-sense: Given that the majority of those who wrote the Universal Declaration of Human Rights were heterosexual, European men, we might expect that the Universal Declaration of Human Rights would be imbued with Eurocentric, hetero-normative and androcentric assumptions. This is why neutralising human rights legislation is so troubling: It erases what would otherwise be an open and reasonable source of discussion.

Acknowledging the situated nature of human rights leads to a further complication. If we accept the premise that human rights legislation are embedded within a set of cultural

reference points, we must also acknowledge that claims to human rights can only be claimed successfully by adopting a particular language, one consistent with the assumptions imbued in the legislation. In other words, actors making claims for human rights must learn to speak using particular rhetorical techniques, implying specific ontological assumptions. The following section will explore this issue.

#### **4. Human Rights as Constitutive Politics**

Given the extent to which Osler and Starkey neutralise human rights discourse, perhaps it is unsurprising that Osler and Starkey do not explore the way human rights may also be constitutive of people's political ambitions. Presented as de-contextualised, the specific content and form of human rights are rendered inconsequential to the way people construct and express their political goals. Thus, they propose that "[human rights] provides principles by which [people can] develop alternative visions of [their] lives *without suggesting the substance of those visions*." (Osler & Starkey, 2010, p. 62; emphasis added).

A similar sentiment is expressed in Osler's most recent article (2013). Drawing on Katarina Tomaševski's work (2001), Osler argues that everyone has an inviolable right to education. One defining principle underpinning the right to education is that "students [should] not [be] expected to conform to specific religious or *ideological* views" (p. 69; emphasis mine). Here, a secular framework – deemed to be non-ideological – is drawn upon as a normative model for education. Whilst this argument raises important issues regarding the intersection of religion and education, what is unconvincing is the notion that secular education is 'non-ideological.' Just as other forms of education are part of a 'reproductive' social process whereby dominant values and ideologies become imbued in students' embodied dispositions (Bourdieu & Passeron, 1990), rights-based education is also implicated in such a process. Osler's position, then, denies exploration into the way secular education can also play a productive role – in the Foucaultian sense of the word (1982) – in shaping children's ambitions in the school environment. Understood as non-ideological, secular education is presented as providing a blank slate through which students can develop independent forms of thought, unaffected by the surrounding environment, and the power relations constitutive of that environment.

This is problematic when analysed from the perspective of a wave of recent ethnographic studies (Cowan et. al, 2001; Goodale, 2009). These have sought to explore the implications for rights-based political movements by attending to 'the micro.' Amongst these

studies, there seems to be a consensus view that rights have certain structuring implications which partially mould people's subjectivities, desires and political ambitions (Cowan et. al, 2001; Goodale, 2009).

An ethnography which exemplifies this view is Cowan's (2001). In this account, Cowan explores the contradictory political consequences resulting from the adoption of minority rights discourse by Slavic-speakers in Greece. Historically, the ethnic distinctiveness of Slavic-speakers had been contested. Some claimed they belonged to an ethnicity which was separate to Greek ethnicity and others adopted a more fluid approach. The latter group saw the distinctiveness of their identity as dependent on social setting. In some situations, their ethnic particularities would become apparent (mainly in private settings), delineating them as different to Greek culture, but in others it would converge with Greek modalities (mainly in public settings). Following the passing of minority group rights legislation in the 1980s, those who emphasized their ethnic particularity saw the new legislation as an opportunity to gain greater political weight within the Greek polity. But they recognised that they would need to make claims for minority rights within the terms of such legislation if they were to be successful. They consequently framed their demands by articulating a reconstructed identity premised on notions of ethnic purity (Cowan, 2001). However, the passing of minority rights legislation forced those who saw their ethnicity as more ambiguous into a conundrum – adopting the language of minority rights would effectively place them in a position of greater political power yet simultaneously undermine their fluid sense of personhood.

A similar conclusion regarding the productive nature of rights is reached in Sieder and Witchell's (2001) analysis of indigenous rights legislation in Guatemala. Following a long history of colonial exploitation, indigenous activists and human rights organisations elaborated a number of legal treaties intended to protect Mayan communities. Influenced by emerging global agendas on indigenous rights, these came to be articulated within terms which emphasized essentialised notions of 'traditional' indigenous culture, constructing indigenous identity as separate to 'modernity.' In the context of Guatemala, this ignored the way Mayan groups articulated the meaning of 'being indigenous' in variegated ways, often emphasizing connections with 'modern' ways of life. Once the legislation was passed, large numbers of Mayan groups adopted a position which articulated a new self-understanding within the terms of the legislation as a means of gaining political voice. As such, they

adopted notions of ‘tradition’ and ‘primitivity’ invoked in the legislation. Interestingly, the boundary between purely strategic presentations of personhood (as demanded by the legislation) and genuine understanding of personhood (Mayan people’s own self-perception) was muddled with the passing of time. Hence, a number of indigenous communities came to partially see themselves within the terms defined by indigenous rights legislation.

Further, Siedel and Witchell (2011) suggest that indigenous rights legislation inadvertently marginalised Mayan women. Prior to the introduction of the legislation, a number of Mayan women had developed social networks with international NGOs. As a result of these connections, they had come into direct contact with notions of female empowerment deriving from feminist traditions, incorporating them into their everyday discourse and practice, and challenging conservative forms of social organisation within indigenous communities. However, when indigenous rights legislation was passed, its sub-clauses stated that greater power would be given to indigenous tribunal systems in the name of encouraging plural forms of justice. The Mayan tribunal system was dominated by Mayan men who held more rigidly patriarchal views than the Guatemalan judicial system. Power shifted and re-articulated patriarchal modes of governance, constraining Mayan women’s drives for greater political recognition.

The ethnographies illustrate that human rights have their own structuring implications. They are introduced in particular contexts in which assumptions imbued in human rights legislation may well stand at odds with local, complex constructions. Rights legislation may possess their own agency in the way political projects are imagined, as with Slavic-speakers in Greece emphasizing ethnic purity (Cowan, 2001) and Mayan communities in Guatemala stressing ‘pre-modern’ indigenous selves (Siedel & Witchell, 2011). The ethnographies presented above also bring us back to the argument presented in the first section of this paper – that rights may have contradictory political effects. Cowan’s ethnography (2001) suggests that the introduction of minority rights drove a wedge between Slavic-speaking communities, dividing a once relatively united community and exacerbating barriers for collective mobilisation amongst Slavic speakers. Further, it highlights that those who viewed rights legislation ambivalently were simultaneously empowered and constrained by rights legislation: adopting minority rights language meant that they would be granted further political power but that their sense of personhood would be undermined. Also, granting Mayan groups’ indigenous rights (Siedel & Witchell, 2001) both perpetuated

colonial understandings – constraining Mayan creativity of self-expression – and gave Mayan communities a new political platform. The marginalisation of Mayan women under indigenous rights expressed further political indeterminacies, highlighting the *spatial* contradictions of rights.

### 5. Wounded Attachments and Rights

“[What are the] political *implications* of the turn toward law...for [the] resolution of...injury [?]...Are we fabricating something like a plastic cage that reproduces...the injured subject it would [seek to] protect?” (Brown, 1995, p. 28)

These examples raise a further issue regarding the relation between the construction of identity, on the one hand, and the way rights constitute personhood, on the other. Here we return to Wendy Brown (1995). Drawing on her concept of ‘wounded attachments,’ Brown explores the difficulties which rights legislation lead to when they reify a ‘wounded’ identity by encoding it in law. She asks: What are the implications of inscribing in law an identity which has borne the brunt of repeated violence and has come to articulate itself within a language of *woundedness* and hurt? Given that law is precisely a space in which possibilities for contestation are circumscribed, and given also that legal norms present themselves in an a-temporal and de-contextualised idiom, she asks: Might inscribing such an identity not *fix* its woundedness in time and also constrain possibilities for (re)creating that identity on new terms? Hence, Brown warns of the dangers of political movements based on identity politics which attempt to emancipate injured subjects through seeking protection in legal frameworks. Critiquing Catherine McKinnon’s (1989) contention that rights-based agendas should be at the forefront of feminist movements to put an end to rape, Brown (1996) controversially asks whether such a move “work[s] to liberate women from sexual subordination, or..., paradoxically, [inadvertently] reinscribe[s] femaleness *as* sexual violability?” (p. 132; emphasis mine).

Elizabeth Povinelli’s (2002) ethnography provides an empirical application of Brown’s theory, examining the effects of introducing laws which grant Aboriginal peoples in Australia the right to land based on their indigenous status. The problem lies precisely in the fact that land claims must be made through recourse to “the performance of cultural continuity” of perceived Aboriginal traits (Povinelli, 2002, p. 156). Not unlike Sieder and Witchell’s (2001) ethnography of Mayan rights, ‘cultural continuity’ is evoked in terms of essentialised understandings of indigenous identity. In the context of the post-colonial,

Australian nation-state, these carry images emerging from an orientalist, colonial gaze which observe Aboriginal rituals with a mixture of fascination for the mysterious and an outright sense of disgust for the 'primitive' and 'barbaric.' Notwithstanding the good intentions with which the laws were passed, Povinelli (2002) concludes that policies for Aboriginal land rights have re-projected and reified colonial understandings onto Aboriginal personhood, legally inscribing the 'wounded attachments' through which Aboriginal identities have been historically forged since the beginnings of colonial domination.

This provides food for thought for the way human rights educationalists articulate a project of social change through rights-based movements based on people's identities. Central to Osler and Starkey's (2005, 2006) writing is a project of anti-racism through rights and a more recent elaboration of rights as a means of empowering women (Osler & Starkey, 2010). In their most recent monograph, Osler and Starkey (2010) draw up a list of rights to advance women's participation in political and economic affairs. Amongst others, women are told they have the right to hold governments to account in protecting them from coercion in the domestic sphere (Osler & Starkey, 2010). In making such a move, are Osler and Starkey not in danger of inscribing the linkage between 'the domestic' and 'women' in law? This is not to refute the argument that such legislation may be necessary to protect women from domestic violence; rather, it is to highlight an uncomfortable and troubling paradox implicated in such a process. A similar point can be made with the way Osler and Starkey (2005) draw on laws such as the *Race Relations Act*, which promotes racial equality in the workplace, and the *Race Equality Code of Practice for Schools*, which encourages racial integration in schools. Whilst such legislation is politically enabling in multiple ways, is there not also a danger of inscribing in law the category of non-white, racial 'Other' as that which is in *a priori* position of exclusion? The question can be posed to other human rights educationalists. We can ask Abdi and Shultz (2009): What are the dangers of "fully entrench[ing] legal statuses that directly protect the rights of women" (p. 6) when it is predicated on "the continued...exclusion that limits the life possibilities of women" (p. 6) and thus the forms of *hurt* through which 'women's' identities are articulated?

Moving beyond the realm of the legal, the issue can be posed more philosophically. Drawing on his notion of the 'instinct to freedom,' Nietzsche (1909/1998) observed a fundamental irony underpinning drives for political emancipation. He argued that movements for political freedom are paradoxical insofar as claims for liberation are initially made from

*within* the terms of the social order against which they rally. As such, they draw on the very categories which constitute that unjust social order, reinstating the forms of classification through which domination occurs as opposed to transcending them. Identity politics is exemplary of this paradox. Rather than move beyond the classifications through which people's suffering is constituted, it draws on the very categories through which exploitation and domination are enabled, i.e. people's specified identities – be it that of 'worker,' 'homosexual,' 'ethnic minority,' or 'woman.' Understood in such a light, what is the effect of stating that "women's rights are human rights" (Osler & Starkey, 2010, p. 68)? Does such a statement increase the potential for women's political recognition? Or does it also attract further attention to the category of 'woman' which gendered separation and inequalities depend on? Equally, does mainstreaming anti-racism in education (Abdi & Shutz, 2009; Osler & Starkey, 2005) enable the re-distribution of power along de-racialised lines? Or does it also perpetuate the historical classification of 'Black,' 'Asian,' or 'Latino' through which racism is constituted? These questions are made not as a means of inviting a simple answer through which to resolve these issues. Rather, they are raised as a means of stressing the importance of acknowledging the complexities figured by such tensions.

### **Conclusion**

As this final section has sought to show, human rights do not merely reflect pre-established identities. Rather, they have their own constitutive functions insofar as they frame the way claims for rights must be made and, when drawing on people's specified identities, may perpetuate and reify historically and socially constructed identities. As such, human rights can have contradictory, complex political effects for the dispossessed and disempowered. The political ambiguities of human rights are further exemplified when we take into account their temporal and spatial dimensions (elaborated in the first section), as well as their specific contextual complexities (elaborated in the second section).

This article has argued that it is paramount that human rights educationalists grapple more thoroughly with the political ambiguities of human rights, not as a means of inviting a quick solution to these issues but as a way of exploring more open-mindedly their potential *and* difficulties in articulating a project of political emancipation and social change. In this sense, this paper is an invitation for further research in HRE. Research is needed which explores a more open-ended form of HRE pedagogy. For instance, research should be undertaken which recognises the situated discursive nature of human rights. Such research



may elaborate in depth how students can examine human rights critically and the way they speak to their own experiences and struggles. This invites a shift away from a ‘banking’ approach – in the Freirian sense of the word (Freire, 1970/1996) – of learning human rights, in which students unquestioningly internalise them. Instead, a ‘problem-solving’ approach (Freire, 1970/1996) is encouraged, exploring the potential, limitations and complexities of human rights. Research should also explore how the constitutive nature of human rights may be acknowledged within HRE pedagogy. This would enhance prospects amongst students for thinking about human rights in more creative ways in order to allow them to challenge and critique the framing of human rights.

Moreover, the article has called for greater reflexivity within HRE research. One might suggest that the reason we observe shortcomings in HRE literature is because of a certain ‘self-evidence’ myth. Popular perception would have it that human rights can only be ‘a good thing;’ indeed, in most social situations it would seem ludicrous to suggest otherwise. It seems that this myth has permeated HRE literature, where human rights have become an unquestionable ‘given,’ one which could only ever be understood as positive, enabling and empowering. We should read the penetration of the self-evidence myth into academic writing as another warning to rigorously question all that which we take for granted or as common-sense. The need for reflexivity is, thus, imperative.

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